ONG & CO. PTE. LTD.

v.

FOO SAE HENG

HIGH COURT, SINGAPORE
CHAO HICK TIN J
[SUIT NO. 4462 OF 1986]
15 JANUARY 1990

CONTRACT: *Stocks and shares - Brokerage - Facilities from plaintiff - Defendant executed memorandum of deposit - Securities - Blank transfer forms - Account agreement - Right of plaintiff to dispute shares in event of default - Whether plaintiffs were negligent - Whether there was a breach of duty - Failure to disclose material facts - Interest rate - Whether it should have been stated in memorandum of deposit - Whether there was a defence to the action.*

The plaintiffs were stockbrokers. At the request of the defendant, the plaintiff bought and sold stocks and shares on the defendant's behalf, pursuant to a margin account arrangement. As a result of these arrangements, the defendant was indebted to the plaintiffs.

The plaintiffs filed an action and was granted summary judgment against the defendant. The defendant appeals.

Held:

[1] There was no burden on the plaintiffs to liquidate the securities of the defendant.

[2] No evidence was tendered to show that the securities were not sold. Further by not objecting, the defendant had effectively affirmed that the transactions were properly carried out. He was estopped from denying the same.

[3] The interest rate was stated in the account agreement; it was not necessary that it should be stated in the memorandum of deposit.

[4] There was no legitimate issues to go to trial, the defendant had no defence and was desperately fishing for one.

[Appeal dismissed with costs.]

For the plaintiff - Tan Hin Tat
For the defendant - S. Asogan

JUDGMENT

Chao Hick Tin J:

The plaintiffs were stockbrokers. At the request of the defendant, the plaintiffs bought and sold stock and shares on the defendant's behalf pursuant to a margin account arrangement. As on 30 June 1986, the defendant owed an outstanding amount of $168,255.02. The Assistant Registrar gave summary judgment against the defendant for $162,000.60 plus interest and costs. The judgment amount was reduced as a result of certain payments made after the institution of this action, the full particulars of which were set out in the statement of accounts of 30 September 1987. The defendant appealed to the Judge-in-chambers. I dismissed the appeal.

The relation between the parties commenced in June 1983. On 21 June 1983, the defendant executed a memorandum of deposit in favour of the plaintiffs in order to obtain facilities from the plaintiffs to deal in stocks and shares on the Singapore Stock Exchange. Pursuant thereto some securities were deposited with the plaintiffs, with the appropriate blank transfer forms duly completed. The parties also executed an account agreement on the same date pursuant to which the defendant was given by the plaintiffs a margin account of upto a million dollars to trade in stocks and shares.

Under clause 2 of the memorandum, it was provided that:

> if (the defendant) makes default in paying further securing or satisfying to (the plaintiffs) on demand any money or liability hereby secured, (the plaintiffs) may without further notice sell or dispose of any securities hereto or any part thereof or any substituted securities in such manner and for such consideration ... as (the plaintiffs) may think fit and (the plaintiffs) may apply the proceeds of sale in or towards discharge of the costs incurred therein and of the money or liabilities hereby secured ...

Of the sum, $168,255.02, claimed in the statement of claim, there was included in it a sum of $57,829.07 for share certificates awaiting collection.

The main points raised in argument by the defendant for leave to defend the action were these:

(i) The plaintiffs were in breach of duty to act diligently when they failed to liquidate the securities upon the defendant's margin account with the plaintiffs exceeding the limit of one million dollars.

(ii) Negligence on the plaintiffs' part in failing to obtain the best possible price in liquidating the securities.

(iii) The defendant had never given instructions to purchase the shares, which certificates were awaiting collection by the defendant.

(iv) The statement of claim had failed to disclose material facts.

On the first point, the defendant argued that clause 2 of the memorandum placed a burden on the plaintiffs to liquidate the securities of the defendant when the defendant's account exceeded the limit of $1 million. I could find nothing to that effect in either the memorandum of deposit or the account agreement. The defendant conveniently overlooked the word "may" in clause 2 of the memorandum - "you **may** without further notice sell ..." The discretion was with the plaintiffs. It lay ill in the mouth of the defendant to complain that the plaintiffs had given him time to pay up. There was clearly no merit in this first point.

On the second point, all I saw was a bare allegation on the part of the defendant. No evidence was tendered that the securities were not sold at the then market price on the Singapore Stock Exchange. No objection was ever raised by the defendant when contract notes of the sales in question were received by him. In answers to my query, Counsel for the defendant admitted that there was no evidence that the plaintiffs had sold any shares contrary to the instructions of the defendant. On the contrary the plaintiffs had shown to this Court that they had regularly and in the ordinary course of business forwarded to the defendant at his given address the debit notes, credit notes and contra statements evidencing the share transactions placed by the defendant.

As regards the third point, what the defendant alleged was again totally devoid of merit. The debit notes on the shares in question (for which a sum of $57,829.07 was owed by the defendant) were sent to the defendant in the usual manner. The defendant had not denied

that he received the debit notes. If in fact the purchases were contrary to instructions, one would expect an immediate protest by him. There was none. The defendant tried to make an issue of the fact that the remisser through whom the defendant dealt with did not file any affidavit. I did not think that was necessary, bearing in mind that all the transactions were documented. I would imagine that over the years a remisser must have dealt with hundreds of clients and entered into thousands of transactions on their behalf. The remisser could not conceivably say anything more than what were in the documents. The defendant had the effrontery to contend that he was under no duty to object to any of the documents sent to him. In my view, by not objecting, he had effectively affirmed that the transactions were properly carried out. He was estopped from denying the same.

As regards the last point, it was argued that the statement of claim was defective because it failed to state what were the monies received from the sale of the securities and how were they utilized to offset outstanding debts due from the defendant to the plaintiffs. In my view, these were really matters of details and evidence. The documents furnished by the plaintiffs to the defendant in the ordinary course of business would have clearly shown to the defendant the details he was asking and these had been exhibited in the plaintiffs' affidavits. The defendant knew precisely what he had to meet. There was no merit in this argument. The defendant also asked how was the interest calculated since the memorandum of deposit did not stipulate the rate of interest. Again, I did not see any substance in this query. The interest rate was stated in the account agreement; it was not necessary that it should also be stated in the memorandum of deposit.

It seemed to me quite clear that the defendant was one of many casualties of the Pan Electric debacle. He was a speculator in the stock market who got his fingers burnt. Instead of owning up to his debts, he sought to create issues where none existed. Before the Assistant Registrar three other issues were raised: (i) no provision in the agreement to charge interest; (ii) payments made by the defendant were not taken into account; and (iii) the account agreement had expired. He had abandoned these points and had not pursued them before me. On the facts of this case I could see no legitimate issues that should go to trial. The defendant was trying hard to find an issue. His Counsel submitted that the "defendant ought to be given an opportunity to prove negligence on the part of the plaintiffs which is a question of fact". But before leave to defend should be granted, some basis must be shown that the plaintiffs were negligent. The defendant had failed to show any such basis. A bald allegation would not do. Many letters were written by the plaintiffs to the defendant requiring him to top-up his margin account. These were ignored. A final letter of demand of 2 July 1986 which also threatened that the matter would be referred to their solicitors, brought no reply or contention to the contrary. I was satisfied that the defendant had no defence and was desperately fishing for one. He was only seeking to delay judgment.

Accordingly, I dismissed the appeal with costs.

Also found at [1990] 1 CLJ 856